

STATE OF IOWA
DEPARTMENT OF COMMERCE
UTILITIES BOARD

IN RE: STATE CERTIFICATION UNDER 47 U.S.C. § 254(e) AND 47 C.F.R. §§ 54.313 AND 54.314	DOCKET NO. USP-01-1
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**ORDER ESTABLISHING PROCEDURES FOR
CERTIFICATION OF RURAL AND NON-RURAL CARRIERS
FOR PURPOSES OF RECEIVING FEDERAL HIGH-COST UNIVERSAL
SERVICE SUPPORT**

(Issued August 13, 2001)

On May 23, 2001, the Federal Communications Commission (FCC) released its "Fourteenth Report And Order, Twenty-Second Order On Reconsideration, And Further Notice Of Proposed Rulemaking In CC Docket No. 96-45, And Report And Order In CC Docket No. 00-256" in The Matter Of Federal-State Joint Board On Universal Service, CC Docket No. 96-45, and Multi-Association Group (MAG) Plan For Regulation Of Interstate Services Of Non-Price Cap Incumbent Local Exchange Carriers And Interexchange Carriers, CC Docket No. 00-256 (the FCC Order), in which the FCC modified its rules for providing high-cost universal service support to rural telephone companies for the next five years. The modifications were based upon proposals made by the Rural Task Force, a study commission established by the Federal-State Joint Board On Universal Service.

According to the FCC, the modified rules strike a balance among the universal service principles and goals enumerated in 47 U.S.C. § 254 (2001), providing predictable levels of federal support so that rural carriers can continue to provide affordable telecommunications service in rural America while ensuring that consumers in all areas of the nation, including rural areas, have access to quality telecommunications services at rates that are reasonably comparable to rates charged for similar services in rural areas. (FCC Order, ¶¶ 1 and 2.) In order to achieve this balance, the FCC made many modifications to the existing high-cost universal service support mechanism, summarized in paragraph 12 of the FCC Order.

With this order, the Utilities Board (Board) addresses one of those modifications: The FCC now requires that each state public utility regulatory authority must file an annual certification with the FCC to ensure that rural telecommunications carriers receiving federal funds under this program use that support “only for the provision, maintenance and upgrading of facilities and services for which the support is intended,” as required by § 254(e). The state certification must be filed no later than October 1 of each year if the certified carriers are to receive support for the following year, see 47 C.F.R. § 54.314(d) (2001).

The Board is the state public utility regulatory authority in Iowa that is required to file the certification with the FCC. Iowa Code ch. 476 (2001). This order will

establish the procedures by which the Board will fulfill this federal mandate by October 1, 2001¹.

The FCC Order provides the following rationale for assigning this duty to the states:

[T]he federal high-cost support that is provided to rural carriers is intended to enable the reasonable comparability of intrastate rates, and states have jurisdiction over intrastate rates. Given that states generally have primary authority over carriers' intrastate activities, we believe that the state certification process provides the most reliable means of determining whether carriers are using support in a manner consistent with section 254(e).

(FCC Order at ¶ 187.) For many of the carriers providing service in Iowa, however, the Board does not have jurisdiction over their intrastate rates, see Iowa Code §§ 476.1 (providing that the Board's rate regulation authority does not apply to mutual telephone companies of which at least 50 percent of the users are owners, cooperative telephone corporations or associations, telephone companies having less than 15,000 customers and 15,000 access lines, municipally-owned utilities, and unincorporated villages that own their own distribution systems) and 476.101 (exempting competitive local exchange service providers from rate regulation). In fact, the Board regulates the rates of only three local exchange service providers (Qwest Corporation, Iowa Telecommunications Services, Inc., and Frontier Communications of Iowa, Inc.), and each of those companies currently operates

¹ The FCC previously adopted a similar requirement for ngn-rural carriers, see 47 C.F.R. § 54.313, and the Board certified the Iowa non-rural carriers in 2000. The Board will use the same procedures set forth in this order for the 2001 certification of the non-rural carriers.

under a price regulation plan pursuant to § 476.97. Thus, the FCC's initial conclusion that "states have jurisdiction over intrastate rates" is not entirely correct in Iowa.

The FCC recognized that some state commissions have only limited regulatory oversight to ensure federal support is reflected in intrastate rates and concluded that such states may nonetheless certify to the Commission that a carrier in the state has accounted to the state commission for the carrier's receipt of federal support and that such support will be used "only for the provision, maintenance and upgrading of facilities and services for which the support is intended." (FCC Order at ¶ 188.) While the FCC Order uses the word "may," implying the certification is optional, the FCC Order also provides that "[a]bsent the filing of such certification, carriers will not receive federal universal service support." (*Id.*) Effectively, this means certification is not optional, because many local exchange carriers in Iowa depend upon federal universal service support to enable them to continue to provide quality telecommunications services at reasonable rates.

The FCC Order also recognizes that certain carriers, in limited instances, may operate entirely outside state regulatory jurisdiction (*e.g.*, certain tribally-owned carriers) and provided that such carriers can certify directly to the FCC by means of a sworn affidavit executed by a corporate officer attesting to the use of the support only for the permitted purposes. The Board will adopt the same procedure to permit carriers in Iowa to certify to the Board that the federal support they receive is used

only for the provision, maintenance, and upgrading of facilities and services for which the support is intended, pursuant to § 254(e).

Any carrier desiring to continue to receive federal high-cost universal service support must file an original and two copies of an affidavit with the Board (with another copy to the Consumer Advocate Division of the Department of Justice) no later than September 10, 2001. Each affidavit must be filed in this docket and should be titled "Certification Of [Company Name]" (the company name must be the same name shown on the carrier's tariff as filed with the Board). The affidavit must be sworn and notarized, must be executed by an authorized corporate officer, and must certify that the carrier will use the support the carrier receives pursuant to 47 C.F.R. §§ 54.301, 54.305, and/or 54.307 and/or part 36, subpart F, of the FCC's regulations only for the provision, maintenance, and upgrading of facilities and services for which the support is intended. All affidavits will become part of the public record maintained by the Board. Affidavits complying with this order will be the basis for Board certification to the FCC.

IT IS THEREFORE ORDERED:

Any local exchange carrier providing service in Iowa and desiring to be certified to the Federal Communications Commission pursuant to 47 C.F.R.

§§ 54.313 (for non-rural carriers) or 54.314 (for rural carriers) must file with the Board

a certificate and affidavit, as described in this order, no later than September 10, 2001.

UTILITIES BOARD

/s/ Allan T. Thoms

/s/ Diane Munns

ATTEST:

/s/ Judi K. Cooper _____
Acting Executive Secretary

Dated at Des Moines, Iowa, this 13th day of August, 2001.